

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
JULY 17, 2008 Session

**WILLIAM B. HUGHES, JR., v. PATSY M. HUGHES**

**Direct Appeal from the Circuit Court for Montgomery County  
No. 50600285 John H. Gasaway, III, Judge**

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**No. M2007-02216-COA-R3-CV - Filed August 22, 2008**

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This is a divorce case. Husband/Appellant appeals, alleging that the trial court erred in: (1) denying his request for equal parenting time, (2) awarding rehabilitative alimony to Wife/Appellee, (3) imputing income of \$6.00 per hour to Wife/Appellee for purposes of setting child support, and (4) awarding Wife/Appellee's attorney fees as alimony *in solido*. Wife/Appellee asserts error in the trial court's awarding Husband/Appellant certain property, and seeks attorney's fees for this appeal. We affirm.

**Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Circuit Court Affirmed**

J. STEVEN STAFFORD, J., delivered the opinion of the court, in which ALAN E. HIGHERS, P.J., W.S., and HOLLY M. KIRBY, J., joined.

Christopher J. Pittman, Clarksville, TN, for Appellant  
B. Nathan Hunt, Clarksville, TN, for Appellant

Mark A. Rassas, Clarksville, TN, for Appellee  
Julia P. North, Clarksville, TN, for Appellee

**OPINION**

Appellant William B. Hughes, Jr. and Appellee Patsy M. Hughes were married on July 16, 1994. One child was born to the marriage, W.H.H. (d.o.b. 3/3/98). In April 2006, Mr. Hughes filed a complaint for absolute divorce against Ms. Hughes. In June 2006, Mr. Hughes filed an amended complaint, which added the ground of inappropriate marital conduct. Mr. Hughes also asked the court to divide the marital property and debt, and to adopt his proposed permanent parenting plan.<sup>1</sup>

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<sup>1</sup> In his proposed parenting plan, Mr. Hughes asks the court to grant him primary residential custody of W.H.H., with Mr. Hughes having 270 days and Ms. Hughes having 95 days. Mr. Hughes reports monthly gross income of \$8,600, (continued...)

In October 2006, Ms. Hughes filed an answer to the amended complaint and a counter complaint for legal separation, asking the court to adopt her proposed permanent parenting plan.<sup>2</sup>

The motions for entry of a temporary parenting plan were heard on December 7, 2006. By order of January 26, 2007, the trial court designated Ms. Hughes the primary residential parent, granted parenting time to Mr. Hughes, and ordered him to pay \$636.00 per month in child support, “based on his income of \$5,633.00 per month and [Ms. Hughes’] presumed income of \$2,400.00 per month.”

In January 2007, Ms. Hughes filed a motion for alimony *pendente lite*. Ms. Hughes’ motion states that, although the parties had speculated that her monthly gross income would be \$2,400, this income had not materialized. This motion was heard on January 7, 2007. By order of February 7, 2007, the trial court found that Ms. Hughes was currently unable to support herself and ordered that the money Mr. Hughes expected from his 2005 and 2006 tax returns be awarded to Ms. Hughes as *pendente lite* support.<sup>3</sup>

A final hearing on the complaint for divorce and counter-complaint for legal separation was set for June 25, 2007. Prior to this hearing, both parties submitted revised proposed parenting plans. In addition to requesting primary residential custody, Ms. Hughes proposed that Mr. Hughes have 160 days with the child, and that she have 205 days. Mr. Hughes’ gross monthly income was listed as \$6,500 per month, and Ms. Hughes’ gross monthly income was listed as \$1,200 per month. Based upon the attached worksheet, Ms. Hughes requested \$818 per month in child support from Mr. Hughes. Mr. Hughes petitioned the court for a reduction in his child support obligation to \$667 per month due to the cessation of child care. On August 30, 2007, the trial court entered its final decree of divorce, wherein the trial court granted a divorce and denied Ms. Hughes’ complaint for legal separation. The trial court further ordered:

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<sup>1</sup>(...continued)

and alleges that Ms. Hughes’ monthly gross income is \$3,000. Based on the attached child support worksheet, Mr. Hughes requests child support of \$497 per month from Ms. Hughes.

<sup>2</sup> In her proposed parenting plan, Ms. Hughes asks for primary residential custody of W.H.H., with Mr. Hughes having 140 days and Ms. Hughes having 225 days. Ms. Hughes adopts Mr. Hughes’ monthly gross income of \$8,600, but alleges that her monthly gross income is \$2,400. Based upon the attached worksheet, Ms. Hughes requests \$766 per month in child support from Mr. Hughes.

<sup>3</sup> Thereafter, the trial court determined that the assumptions used in the original temporary custody and support hearing regarding the parties’ incomes were inaccurate. At that time, the parties were in the midst of a bankruptcy on Mr. Hughes’ failed business. Based upon the circumstances, the trial court revisited the issue of support. By Order of February 23, 2007, the court ordered Mr. Hughes, in addition to the obligations outlined in the previous orders, to pay Ms. Hughes’ monthly car note in the approximate amount of \$535.00 per month pending receipt of the tax returns. In August 2007, Ms. Hughes filed a motion for contempt against Mr. Hughes, alleging that Mr. Hughes had failed to pay the court-ordered car payments, and that her vehicle was in danger of being repossessed. By order of September 19, 2007, Ms. Hughes’ petition for contempt was denied based upon insufficient proof.

2. That [Mr. Hughes'] prayer for equal division of parenting time...is hereby denied, with [Ms. Hughes] remaining the primary residential parent of the minor child, [W.H.H.].

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6. That [Ms. Hughes] is awarded rehabilitative alimony in the amount of \$1,800.00 per month for a period of thirty (30) months, with the first month commencing on [] July, 2007, with weekly payments of \$450.00 for the first four weeks of each month.

7. That a judgment is entered in favor of [Ms. Hughes] and against [Mr. Hughes] in the amount of \$10,851.64 for attorney's fees and costs....

In addition, the trial court divided certain marital property, and specifically awarded Mr. Hughes his "mother's and grandmother's rings," and "both fur coats belonging to [Mr. Hughes] mother." Incorporated by reference into the final decree of divorce is a permanent parenting plan. In relevant part, the parenting plan states that Ms. Hughes will have 196 days per year with the child, and Mr. Hughes will have 169 days with the child. Concerning child support, the trial court set Mr. Hughes' monthly income at \$6,500.00, and Ms. Hughes' monthly income at \$1,040.00. Mr. Hughes was ordered to pay \$226.38 per week in child support.

Mr. Hughes appeals and raises four issues for review as stated in his brief:

1. Did the trial court err in denying the Appellant's request for equal shared parenting of the parties' minor child?
2. Did the trial court err in ordering the Appellant to pay \$1,800.00 per month in alimony for thirty (30) months?
3. Did the trial court err in imputing the Appellee's income to be \$6.00 per hour for purposes of computing child support?
4. Did the trial court err in awarding the Appellee attorney fees totaling \$10,851.64?

In the posture of appellee, Ms. Hughes raises two additional issues for review:

1. The Appellant should be responsible for costs of appeal in this cause.

2. The trial court erred in awarding the Appellant rings and two fur coats, that were gifts, given to the Appellee by her father-in-law prior to his death.

Since this case was tried by the court sitting without a jury, we review the case *de novo* upon the record with a presumption of correctness of the findings of fact by the trial court. Unless the evidence preponderates against the findings, we must affirm, absent error of law. *See* Tenn. R. App. P. 13(d). Furthermore, when the resolution of the issues in a case depends upon the truthfulness of witnesses, the trial judge who has the opportunity to observe the manner and demeanor of the witnesses while testifying is in a far better position than this Court to decide those issues. *See McCaleb v. Saturn Corp.*, 910 S.W.2d 412, 415 (Tenn.1995); *Whitaker v. Whitaker*, 957 S.W.2d 834, 837 (Tenn.Ct.App.1997). The weight, faith, and credit to be given to any witness' testimony lies in the first instance with the trier of fact, and the credibility accorded will be given great weight by the appellate court. *See id.*; *see also Walton v. Young*, 950 S.W.2d 956, 959 (Tenn.1997).

### **Equal Parenting Time**

It is well settled that, in matters of support, child custody, visitation and related issues, trial courts are given broad discretion; consequently, appellate courts are reluctant to second-guess a trial court's determinations regarding these important domestic matters. Tenn. Code Ann. § 36-6-101(a)(1) (2005); *Parker v. Parker*, 986 S.W.2d 557, 563 (Tenn.1999); *Hoalcraft v. Smithson*, 19 S.W.3d 822, 827 (Tenn. Ct. App.1999). As explained in Richards on Tennessee Family Law:

It is not the function of appellate courts to tweak a visitation order in the hopes of achieving a more reasonable result than the trial court. Appellate courts correct errors. When no error in the trial court's ruling is evident from the record, the trial court's ruling must stand. This maxim has special significance in cases reviewed under the abuse of discretion standard. The abuse of discretion standard recognizes that the trial court is in a better position than the appellate court to make certain judgments. The abuse of discretion standard does not require a trial court to render an ideal order, even in matters involving visitation, to withstand reversal. Reversal should not result simply because the appellate court found a "better" resolution.

Janet L. Richards, Richards on Tennessee Family Law § 9-2 (2d ed. 2004) (quoting *Eldridge v Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001)).

In making its decision regarding entry of a permanent parenting plan, the trial court should consider the factors set out at Tenn. Code Ann. § 36-6-404(b) (2005). Among those factors are:

(1) The parent's ability to instruct, inspire, and encourage the child to prepare for a life of service, and to compete successfully in the society that the child faces as an adult;

(2) The relative strength, nature, and stability of the child's relationship with each parent, including whether a parent has taken greater responsibility for performing parenting responsibilities relating to the daily needs of the child;

(3) The willingness and ability of each of the parents to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent, consistent with the best interests of the child;

\* \* \*

(5) The disposition of each parent to provide the child with food, clothing, medical care, education and other necessary care;

(6) The degree to which a parent has been the primary caregiver, defined as the parent who has taken the greater responsibility for performing parental responsibilities;

(7) The love, affection, and emotional ties existing between each parent and the child;

(8) The emotional needs and developmental level of the child;

\* \* \*

(11) The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment;

\* \* \*

(15) Each parent's employment schedule, and the court may make accommodations consistent with those schedules;

Tenn. Code Ann. § 36-6-404(b).

In the case at bar, the parties could not agree on a parenting plan; consequently, the trial court (taking the proposed plan of each party into consideration) fashioned a permanent parenting plan, granting Ms. Hughes primary residential custody, but giving Mr. Hughes 169 days with the child.

Relying on the case of *In re C.R.D.*, No. M2005-023760COA-R3-JV, 2007 WL 2491821 (Tenn. Ct. App. Sept. 4, 2007), Mr. Hughes asserts that the trial court's decision to deny equal parenting time was based solely upon the trial court's skepticism of that type of parenting arrangement in general. We disagree. From its comments at the hearing, it is clear that the trial court considered the factors set out at Tenn. Code Ann. §36-6-404(b), *supra*. The court states that it arrived at the permanent parenting plan based upon its consideration of several factors, including the fact that Ms. Hughes has been the primary caregiver for the child, and that there is a need for continuity and stability given the child's ADHD.

We agree with the trial court that, based on the proof, consistency and stability are paramount to the child's well-being, particularly in light of his ADHD diagnosis. The record reveals that both parents are fully capable of providing a nurturing and stable environment for the child. However, the facts illustrate that Ms. Hughes has been the primary caregiver for the child on a day-to-day basis—this due, in large part, to Mr. Hughes' work schedule. Furthermore, Ms. Hughes is still residing in the marital home.<sup>4</sup> We cannot overlook the fact that Mr. Hughes is very involved with his son and that he also has flexibility in his work schedule. However, Ms. Hughes has more. This, coupled with the fact that Ms. Hughes has been the primary caregiver, and the fact that she is still residing in the marital home weighs in her favor.

The parenting arrangement arrived at by the court is, in fact, just short of an equal parenting time arrangement. It appears that the trial court considered that the child is close to both of his parents, that both parents are very active in his life, and that both parents have no desire to preclude the other from interacting with the child. Based upon the foregoing authority, and the special consideration of the child's ADHD, we are unable to conclude that the trial court abused its discretion in denying the request of Mr. Hughes for equal parenting time. That being said, the expended visitation awarded to Mr. Hughes will ensure that he remains a constant influence in his son's life. In short, the child will get stability and continuity, while having meaningful and substantial contact with both parents. This arrangement is certainly in his best interest.

#### **Ms. Hughes' Income**

Mr. Hughes asserts that the trial court erred in imputing income of \$6.00 per hour to Ms. Hughes, based upon his contention that she is capable of earning much more. The trial court first heard evidence in this case at the December 7, 2006 hearing. At that time, Ms. Hughes was working for Professional Mortgage Group in Clarksville. Her salary was based solely on commissions, which she estimated would be approximately \$2,400 per month, beginning in January of 2007. This speculative income did not materialize and in January 2007 Ms. Hughes petitioned the court for temporary support, which the trial court granted.

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<sup>4</sup> Although the marital home was sold (due, in large part, to the bankruptcy), the new owners have allowed Ms. Hughes to rent the property (at a very reasonable monthly rate) for at least the next two years.

Ms. Hughes' ability to work, was affected by several factors. It is undisputed that Ms. Hughes suffers from degenerative disc disease (for which she has had three surgeries), fibromyalgia, and autoimmune deficiency problems. In addition, the parties' credit issues (due in large part to the failure of Mr. Hughes' business) have hindered Ms. Hughes' ability to find work in the financial and mortgage industries. Furthermore, Ms. Hughes has been the person primarily responsible for most of the day-to-day care of the minor child, which requires her to have flexibility in her work schedule.

At the June 25, 2007 hearing, Ms. Hughes testified that she had submitted numerous applications in person and on the internet; however, she has been unable to procure employment. Ms. Hughes not only submitted applications in her preferred field (financial and mortgage work), but also outside her field for receptionist and other office positions. Ms. Hughes testified that she had worked at Rafferty's restaurant as a waitress, but due to her back problems was unable to continue there. At the time of the June hearing, Ms. Hughes was working as a dog groomer for her brother's girlfriend's business.

The trial court did not find Ms. Hughes to be voluntarily underemployed. Based upon the evidence presented, we are unable to disagree given Ms. Hughes' efforts and the limitations presented by her medical conditions. *See* Tenn. Comp. R. & Reg. 1240-2-4-.04(2)(iii). The Tennessee Child Support Guidelines allow the court to impute income where there is no reliable evidence of income:

(iv) Imputing Income When There is No Reliable Evidence of Income.

(I) When Establishing an Initial Order.

I. If a parent fails to produce reliable evidence of income (such as tax returns for prior years, check stubs, or other information for determining current ability to support or ability to support in prior years for calculating retroactive support); and

II. The tribunal has no reliable evidence of the parent's income or income potential;

III. Then, in such cases, gross income for the current and prior years shall be determined by imputing annual gross income of thirty-six thousand three hundred sixty-nine dollars (\$36,369) for male parents and twenty-six thousand nine hundred eighty-nine dollars (\$26,989) for female parents. These figures represent the full time, year round workers' median gross income, for the Tennessee population only, from the American Community Survey of 2004 from the U.S. Census Bureau.

Tenn. Comp. R. & Reg. 1240-2-4-.04(2)(iv).

The record contains little evidence on which to determine Ms. Hughes' actual income from her work as a dog groomer. The record contains only Ms. Hughes' income and expense statement, and her testimony concerning same, to wit:

Q [to Ms. Hughes]. And now, according to your latest income and expense statement, you told the Court what you believe you can make...is \$1,200 a month, correct?

A. At this point, that is the only thing that I have found for someone to hire me at, and if it is dog grooming...if that's what puts food on my table, then that's what I will do and that is what I have found.

Q. And when I did the math on that, it comes to—it looks like less than \$6 an hour average, if you're working all day, five days a week. Would you agree with me on that?

A. You are a pretty smart man. I will agree with you.<sup>5</sup>

From the record before us, we cannot conclude that the trial court erred in setting Ms. Hughes' income at \$6.00 per hour. Both the Tennessee Child Support Guidelines, and Ms. Hughes' testimony support the trial court's decision.

### **Rehabilitative Alimony**

We review an award of alimony under the abuse of discretion standard. *Herrera v. Herrera*, 944 S.W.2d 379, 388 (Tenn.Ct.App.1996). Trial courts have broad discretion to determine whether spousal support is needed and, if so, the nature, amount, and duration of support. *See Garfinkel v. Garfinkel*, 945 S.W.2d 744, 748 (Tenn. Ct. App.1996). If a discretionary decision is within a range of acceptable alternatives, we will not substitute our judgment for that of the trial court simply because we may have chosen a different alternative. *White v. Vanderbilt Univ.*, 21 S.W.3d 215, 223 (Tenn. Ct. App.1999).

When determining whether an award of alimony is appropriate, courts must consider the statutory factors found at Tenn.Code Ann. § 36-5-121(i) (2005). The two most important factors are the need of the spouse seeking support and the ability of the other spouse to provide such support. *See, e.g., Oakes v. Oakes*, 235 S.W.3d 152, 160 (Tenn.Ct.App.2007). Alimony decisions, by their very nature, typically hinge on the unique facts and circumstances of the case. *Id.* at 160; *see also Anderton v. Anderton*, 988 S.W.2d 675, 683 (Tenn.Ct.App.1998).

The relevant factors to be considered under Tenn.Code Ann. § 36-5-121(i) when determining whether to award alimony include:

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<sup>5</sup> This evidence was adduced at the June 2007 hearing.



- (1) The relative earning capacity, obligations, needs, and financial resources of each party, including income from pension, profit sharing or retirement plans and all other sources;
- (2) The relative education and training of each party, the ability and opportunity of each party to secure such education and training, and the necessity of a party to secure further education and training to improve such party's earnings capacity to a reasonable level;
- (3) The duration of the marriage;
- (4) The age and mental condition of each party;
- (5) The physical condition of each party, including, but not limited to, physical disability or incapacity due to a chronic debilitating disease;
- (6) The extent to which it would be undesirable for a party to seek employment outside the home, because such party will be custodian of a minor child of the marriage;
- (7) The separate assets of each party, both real and personal, tangible and intangible;
- (8) The provisions made with regard to the marital property;
- (9) The standard of living of the parties established during the marriage;
- (10) The extent to which each party has made such tangible and intangible contributions to the marriage as monetary and homemaker contributions, and tangible and intangible contributions by a party to the education, training or increased earning power of the other party;
- (11) The relative fault of the parties, in cases where the court, in its discretion, deems it appropriate to do so; and
- (12) Such other factors, including the tax consequences to each party, as are necessary to consider the equities between the parties.

Tenn.Code Ann. § 36-5-121(i).

Once the trial court has determined that alimony is appropriate, it must determine the nature, amount, and duration of the award. The court may award “rehabilitative alimony, alimony *in futuro* (also known as periodic alimony), transitional alimony, alimony *in solido*, (also known as lump sum alimony), or a combination of these....” Tenn.Code Ann. § 36-5-121(d)(1).

The trial court awarded Ms. Hughes’ rehabilitative alimony at a rate of \$1,800.00 per month for a period of thirty (30) months. Tennessee public policy favors rehabilitative alimony in cases where one spouse is economically disadvantaged. Tenn.Code Ann. § 36-5-121(d)(2).

The evidence established that Ms. Hughes suffers from medical conditions that preclude her from certain types of work. However, there is no indication that she is not able to perform the duties required in the mortgage and/or financial field. In the past, Ms. Hughes has been able to earn up to \$60,000 per year (although she averaged \$30,000 to \$40,000). Because Ms. Hughes has a proven

ability to earn, alimony *in futuro* would not be appropriate in this case. Nonetheless, the record shows that, at present, the parties' credit problems have a bearing on Ms. Hughes' employment in the financial arena. Consequently, Ms. Hughes finds herself in the dog grooming business, making approximately \$1,800 per month. Her income and expense report shows monthly expenses of \$4,956.08. Moreover, Ms. Hughes testified that she has had to cash in her 401(k), and has had to borrow money from family members in order to make ends meet.

On the other hand, Mr. Hughes has been able to procure a position with Grade, L.L.C.. From the testimony of John Denham, the Chief Managing Partner for Grade, L.L.C., it appears that Mr. Hughes' position is stable, and that there is some potential for him to advance within the company. In addition to his \$1,500 per week salary, Mr. Hughes also has a company truck, a company gas card, and has one-half of his insurance premium paid by Grade. It is undisputed that, at present, Ms. Hughes has no health insurance, and cannot afford any on her current salary. That being said, thirty (30) months of support should be sufficient to allow Ms. Hughes time to make progress towards reestablishing good credit, after which she should be able to procure more lucrative employment. From the totality of the circumstances, we conclude that the trial court correctly ordered rehabilitative alimony in the amount of \$1,800 per month for the period of thirty (30) months.

#### **Attorney's Fees**

The trial court also awarded Ms. Hughes \$10,851.64 in attorney's fees. Mr. Hughes asserts that this award is excessive. We disagree. An award of attorney fees in a divorce case constitutes alimony *in solido*. *See Herrera v. Herrera*, 944 S.W.2d 379, 390 (Tenn. Ct. App.1996). Tenn.Code Ann. § 36-5-121(d)(5) (2005) provides: "Alimony in solido may be awarded in lieu of or in addition to any other alimony award, in order to provide support, including attorney fees, where appropriate." As set out above, this Court reviews alimony decisions under an abuse of discretion standard. *Garfinkel*, 945 S.W.2d at 748. As with any award of alimony, a trial court should consider the relevant factors set forth in Tenn.Code Ann. § 36-5-121(i), *supra*, with the most important factors being the need of the economically disadvantaged spouse and the obligor spouse's ability to pay. *Riggs*, 250 S.W.3d 453, 457 (Tenn. Ct. App. 2007). As this Court explained in *Koja v. Koja*:

[Awards of attorneys' fees as alimony *in solido*] are appropriate, however, only when the spouse seeking them lacks sufficient funds to pay his or her own legal fees...or would be required to deplete his or her resources in order to pay these expenses. Where one party has been awarded additional funds for maintenance and support and such funds are intended to provide the party with a source of future income, the party need not be required to pay legal expenses by using assets that will provide for future income. *Koja v. Koja*, 42 S.W.3d 94, 98 (Tenn.Ct.App.2000) (internal citations omitted).

We have already determined that Ms. Hughes is in need of rehabilitative alimony. Consequently, had the trial court ruled that Ms. Hughes should be responsible for her own attorney's

fees, that decision would have been undermined since the bulk of that much-needed income would have been required to satisfy her attorney's fees. Furthermore, the trial court's order grants Mr. Hughes a credit against the award of attorney's fees from the tax return monies paid to Ms. Hughes.<sup>6</sup> Considering the equities between the parties, we are unable to conclude that the trial court erred in granting Ms. Hughes her attorney's fees as alimony *in solido*.

Ms. Hughes asks this Court to award her attorney's fees in defending this appeal. Given the alimony ordered in this case, we are of the opinion that each party should bear his or her own attorney's fees on appeal.

### **Furs and Rings**

The parties do not dispute the division of marital property except for the rings and fur coats that belonged to Mr. Hughes' mother and grandmother. Ms. Hughes contends that the trial court erred in awarding these items to Mr. Hughes. Specifically, Ms. Hughes asserts that these items were given to her as a gift from her father-in-law. Mr. Hughes contends that these items were not gifts, but were "entrusted" to Ms. Hughes. Trial courts are given wide latitude in equitably dividing marital property and the appellate court will defer to the trial judge's decision unless the decision is inconsistent with the factors set forth in Tenn. Code Ann. § 36-4-121©, or is not supported by a preponderance of the evidence. *See Schuett v. Schuett*, No. W2003-00337-COA-R3-CV, 2004 WL 689917, at\* 1 (Tenn.Ct.App. March 13, 2004) perm. app. denied (Tenn. Nov. 15, 2004).

Here, the question of ownership of these items is largely a matter of he said, she said. However, whether a gift or entrustment, it is undisputed that these items were from Mr. Hughes' side of the family. There is no evidence in record as to the value of the items. Consequently, we cannot determine whether the award of same to Mr. Hughes disrupts the equitable division of property. However, the fact that these items belonged to Mr. Hughes' grandmother and mother weighs heavily in his favor. From the record before us, and in light of the entire property division in this case, we conclude that the evidence does not preponderate against the trial court's award of these items to Mr. Hughes. That being said, Ms. Hughes asserts that, although she is in possession of the fur coats, she has "lost" the rings. We find that Ms. Hughes should return this property to Mr. Hughes immediately.

For the foregoing reasons, the order of the trial court is affirmed. Costs of this appeal are assessed one-half to Appellant William B. Hughes and his surety, and one-half to Appellee Patsy M. Hughes, for which execution may issue if necessary.

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J. STEVEN STAFFORD, JUDGE

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<sup>6</sup> At oral argument, counsel for Mr. Hughes stated that the tax returns totaled approximately \$9,000. Consequently, Mr. Hughes only had to pay approximately \$1,000 of the attorney's fee award in lump-sum.